IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3901 of 2007
To
FIRST APPEAL No. 3916 of 2007
With
FIRST APPEAL No. 3917 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAND ACQUISITION OFFICER & 1 - Appellant(s)
Versus
MANIBHAI SINCE DECD. THRO' KANUBHAI MANIBHAI PATEL & 2 - Defendant(s)

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Appearance :
MR SUNIT SHSH, GP for Appellant(s) : 1 – 2 IN FA NOS.3901 TO 3908 OF 2007.

MS REETA CHANDARANA, AGP for Appellant(s) : 1 – 2 IN FA NOS.3909 TO 3917 OF 2007
None for Defendant(s) : 1 - 2.
MR APURVA R KAPADIA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 30/08/2007

ORAL JUDGMENT

1. The Special Land Acquisition Officer and another, appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Civil Procedure Code. 1908 against the judgment and award dated 13/6/2006 passed by the learned 4th Additional Senior Civil Judge, Ahmedabad (R), District Court at Navrangpura in Land Acquisition Reference Case No.172 to 188 of 2003. By the impugned judgment and award, the learned Judge was pleased to allow the Land Reference Cases partly and held that the claimants are entitled to receive the amount of Rs.83/-per sq. mtr. for the acquired land as an additional compensation over and above the compensation already awarded by the Land Acquisition Officer. The learned Judge also awarded consequential benefits in this behalf.

2. It may be noted that these are the group matters, so, I take the facts of Land Acquisition Reference Case No.172 of 2003. The facts giving rise to the appeal are as under:

2.1) The Executive Engineer, Narmada Project, Division No.4, Gandhinagar had proposed by his communication to acquire the land of village Vahelal, Taluka-Daskroi, District-Ahmedabad for the purpose of construction of Narmada Canal.

2.2) The Executive Engineer sent the said proposal to the State Government to fulfill the procedure under the provisions of the Land Acquisition Act. After the State Government satisfied, the State Government has issued Notification under Section 4 of the Land Acquisition Act which provides for publication of preliminary notification and powers of officers thereupon and the same was published on 20/1/2000 and also issued Notification under Section 6 of the Land Acquisition Act which provides for declaration that land is required for a public purpose and the same was published on 10/5/2000.

2.3) Thereafter, after completing the formalities, the Special Land Acquisition Officer has passed an

award on 31/3/2002 and awarded the compensation of Rs.5.40 per sq. mtr. for the acquired land.

2.4) As the claimant felt that the amount of compensation is meager, they have filed reference applications before the learned District Judge. In the said reference applications, claimants have prayed for Rs.100/- per sq. mtr. as compensation for their acquired agriculture lands. It was contended by the claimants that the village in which their lands was situated had got all the facilities like light, water etc. and they have also contended that in their village there are milk co-operative society, high school, primary schools, hospital, bus stand and road, telephone facilities etc. and by making such contentions, they have stated that they are entitled to get compensation of Rs.100/- for their acquired lands as the land in question is situated in a very developed area.

2.5) Opponent no.1-State Government has filed its written statement vide Exh.10 and opponent no.2, Executive Engineer has also filed its written

statement vide Exh.21 and both have denied the contentions of the reference application in toto and requested to dismiss the reference applications. The said opponents have stated before the Court that the compensation awarded by the Special Land Acquisition Officer is just and proper and therefore, the claimants are not entitled to receive any additional amount of compensation. It was contended by the opponents that the Special Land Acquisition Officer has awarded compensation after taking into consideration the location of each piece of land, prevailing market rate, type of land and other relevant factors and also the nature of land, area, level and development of the acquired land and considering the sale instances of the nearby area of last five years.

2.6) Before the learned District Judge, following issues were framed at Exh.12 and claimants have laid both the oral and documentary evidence before the Trial Court.

2.7) Before the Trial Court, at Exh.18, one Shri Punjabhai Ishwarbhau was examined. He is the claimant of survey no.826 and 829 and his land admeasuring 944 and 1806 sq. mtr. He has stated in his deposition that his lands were acquired for the construction of Narmada canal and the lands of other farmers were also acquired for the same purpose and all the acquired lands are adjacent to each other. He has further stated that all the acquired lands are equal and fertile land and having irrigation facilities by way of wells and bore wells and the farmers of village Vahelal are taking two to three different crops in a year and earning net agricultural income of Rs.35,000/- per vigha per year. It was further stated that our village is developed village having 4000 population and having facilities like water, lights, pakka road, co. op. Society, post office, primary school, health center, milk society etc. The village has also farm house, residential societies, Zank GIDC, Telephone Exchange, rice mill, N.A. Land, Cancer Hospital, S.T. Bus facilities etc and in that way the village one of the developed village of Daskroi

Taluka. It was further stated that our village is situated three kms. Interior form Ahmedabad-Dahegam Highway Road. It was further stated that the land of adjoining village Zank were also acquired earlier for the purpose of construction of Narmada Canal and the farmers of acquired land of village Zank had preferred Reference before the Reference Court and the Reference Court has awarded Additional Compensation of Rs.36.00 per sq. mtr. and no appeal has been preferred by the opponents against the award and judgment of the earlier acquired land of adjoining village Zank and the payment to that effect also disbursed to the claimants by the other side as per the Judgment and Award of the Reference Court and the copy of that judgment is produced by the claimant on record. It was further stated that the acquired land are situated nearer to the Gamtal land and per year there is a increased in the price to the tune of 12% to 15%. It is further stated that the fertility of all the acquired land are similar and same type of crops are possible.

2.8) The said witness was cross-examined by the District Government Pleader Mr.P.M.Trivedi for the opponent no.1. In the cross-examination, it was stated that there were sale and purchase transaction of land were being made and sale deed were also being executed and before publication proceeded before five years and it was also stated that survey no.390 of Vahelal Kadavani Mandal and Survey No.393 of Dhulaji Chaguji acquired and he is aware about the same. It was further stated that in award of survey no.391 of that village for 2428 sq. mtr., the price was shown at Rs.27,830/-. It was denied that looking to the sale transaction, the price of the lands is correctly arrived at. It was admitted that the crops which was grown and taken were being noted in the village form no.7/12 and similarly the irrigation facility also being noted in the same form. It was decided that they were only taking one crop in a year and also admitted that they were not keeping accounts. It was admitted that they have not produced any sale and purchase bills. It was denied that 50% were being spent as against be agricultural expenses.

It was denied that there was no development in our village and it was also denied that the village was situated 40 kms. away from taluka center and Zank was also situated 10 kms. away. It was denied that he has not seen the acquired land of village Zank. It was admitted that there is a GIDC in village Zank.

2.9) The said witness as further cross examined by the learned advocate for the opponent no.2 and in the cross-examination, it was admitted by the witness that they have been served notice and at that time, they have not produced any evidence and it was also admitted that the production are different for each field. It was denied that Zank is more developed than their village. And it was also denied that in their village there was no industrialization.

2.10) Opponent no.2 has also examined one Vijaykumar Laxmanbhai Vaghela vide Exh.20 and the said witness has in his deposition has stated that he is working as Deputy Executive Engineer since

1979 and in Vahelal division, he is working since four years and at the time of acquisition, he was not serving at Vahelal and he is giving deposition relying upon the record. The Official of Collector Officer are decided price relying upon five years production. He has seen the Vahelal village and there is irrigated and non irrigated land and it is situated 15 kms. away from Dahegam and 25 kms. away from Ahmedabad. He has also seen the Zank village and the land of Zank is better than the land of village Vahelal. The economic development of village Vahelal is better and that village is not backward.

2.11) The said witness was cross-examined by the learned advocate Mr.K.B.Patel for the claimants and during the cross-examination, the said witness has admitted that the border of village Zank and village Vahelal is adjoining to each other and some lands of village Vahelal are converted into non agricultural land. It was further admitted that at the time of acquisition of village Vahelal there is no B.Ed. College. It was also admitted that the

land of village Vahelal are better than village Zank.

2.12) The claimants have also produced documentary evidence i.e. Form No.7/12 at Exh.16 to 25 and Judgment of village Zank LAQ No.151 of 1991 in the case of legal heirs of Shakraji Karaji vs. Special Land Acquisition Officer and another, decided by the learned Second Extra Assistant Judge and Special Judge (LAQ) Ahmedabad (R), District Court, At Navrangpura on 30/10/2001.

2.13) From the record of the case, it infers that the land of village Zank which were previously acquired in pursuant to the publication of Notification under Section 4(1) of the Act on 4/4/1986 and the compensation payable was determined by the Reference Court at the rate of 37.50 per sq. mtr. as total compensation. While in the present case, the land of village Vahelal were acquired in pursuant to the Notification under Section 4 of the Act dated 20/1/2000 and therefor, it seems that there is a gap of 13 years and 9

months. The learned Judge has also relied on the principle laid down by this Court that “when there is time leg between Notification published under Section 4(1) of the Act, the claimant should be given reasonable rise in the price of land at the rate of 10% p.a.”. On the same point, the learned Judge has relied upon the judgment of the Hon'ble Supreme Court in the case of Special Land Acquisition Officer, Bharuch vs. Motibhai Mohanbhai, reported in 1997 (2) GLH 773.

2.14) After going through the evidence on record and judgment cited above, the learned Judge has observed that this Court has very clearly establish that “Market value of the land is determined by taking into consideration by the amount awarded in respect of the similar land acquired in adjoining village some years before than in that case increase in the amount by 10% p.a. for each year by way of appreciation” which means that if there is a time leg between the notification, than in that case the land owners whose land is subsequently acquired are entitled to receive reasonable rise in

the price. In view of the judgment cited above and facts that in the present case, there is a time gape of 13 years and 9 months. The learned Judge has also held that the claimants are entitled to receive reasonable rise to certain extent in the price. The learned Judge has further observed that the compensation awarded by the Special Land Acquisition Officer is highly inadequate. Thus, looking to the locations of the acquired land, the date of publication of notification under Section 4 and the judgment passed by the Reference Court in other Reference Cases of adjoining village and also considering the deposition of the witness of the other side in which he had very fairly admitted that the economic development has also taken place in village Vahelal, the learned Judge has assessed the market value of the land in question at the rate of Rs.88.40 per sq. mtr. for the acquired land and as the Special Land Acquisition Officer has already awarded Rs.5.40 per sq. mtr. to present claimants in respective cases, according to the opinion of the learned Judge, the fair and just amount of Rs.83/- per sq. mtr. (rounded up) as

additional compensation should be swarded than, it will meet and end of justice and hence the learned Judge has awarded Rs.83/- as an additional compensation.

3. On behalf of the appellants, learned Government Pleader with learned AGP has tried to assail the order of the learned Trial Judge on various grounds.

4. Mr.Apurva Kapadia, learned advocate is appearing for the defendant no.3. He has stated that the learned Judge has given very proper award, particularly the learned Judge has relied upon the judgment and award of Reference Case No.151 of 1991 dated 30/10/2001. In the said Reference Case No.151 of 1991, acquisition was in connection with village Zank, Taluka-Dahegam, District-Gandhinagar and Notification under Section 4 was published on 4/4/1986 and the learned Judge has awarded compensation of Rs.36/- as an additional amount over and above the compensation awarded by the Special Land Acquisition Officer. Learned advocate

for the claimants has stated that the State Government has not filed any appeal against the said judgment and award of the learned Judge and in fact accepted the same. It has also been stated that even in the deposition also, the claimants have stated same thing and Government has not challenged the same. Therefore, there is undisputed fact that the learned Judge has relied upon the case of Heirs of Shankarji Karaji and others vs. Special Land Acquisition Officer and another in Reference Case No.151 of 1991 in connection with village Zank. It may be noted that in the present case, the land acquired is of village Vahelal and the land village Vahelal is adjoining to the land of village Zank. In the present case Notification under Section 4 was published on 20/1/2000. Thus, about after 14 years, the said notification has issued. So, as in the previous award, the Court has awarded compensation of Rs.36/- as an additional amount, the learned Judge has after considering the same, awarded compensation of Rs.83/- per sq. mtr. as an additional amount over and above the compensation

awarded by the Special Land Acquisition Officer is just and proper. The claimants have also produced oral as well as documentary evidence in this behalf. The claimants have also produced application under Order 18 Rule 4 of the Civil Procedure Code which provides for recording of evidence.

5. It was further submitted by the learned advocate for the claimants that for increasing the amount of compensation, the learned Judge has relied upon the judgment of the Hon'ble Supreme Court in the case of **Jashvantbhai vs. Government of Goa, reported in AIR 1987 Bombay 214** and the judgment of the Hon'ble Supreme Court in the case of **Govindbhai Dajibhai vs. Special Land Acquisition Officer and others, reported in AIR 1995 Gujarat 200** and another judgment of this Court in the case of **Special Land Acquisition Officer vs. Kodarbhai Jenabhai and others, reported in 2002 (2) GLH 435.** In view of the same, the learned Judge has awarded compensation in this behalf.

6. I have gone through the judgment of the trial Court. It may be noted that principle of previous award is very relevant in this behalf under the provisions of the Land Acquisition Act.

7. Therefore, I see that the learned Judge has given very cogent and convincing reasons to give the compensation. In view of the same, I see that there is no illegality in view of the provisions of law. Hence, the judgment of the Trial Court is confirm.

8. The learned District Judge has relied upon the judgment of the Hon'ble Supreme Court and District Courts as well as of this Court and after relying upon all the documentary as well as oral evidence, passed an award.

9. Therefore, in my view, the award of the learned Reference Court is fair and proper. The learned Judge has awarded proper compensation in this behalf. Therefore, there is no merits in the present appeals and the same are required to be

rejected. Therefore, the present appeals are rejected. All the appeals are disposed of accordingly.

(K.M.Mehta, J.)

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